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EXAMINER

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.



***Detailed Action***

Claims 1-30 are pending.

***Election/Restrictions***

Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I: Claims 1-9, 19 and 23 drawn to an isolated polypeptide having the amino acid sequence of SEQ ID NO: 1 having Chalaropsis lysozyme activity, encoding polynucleotide, vectors, host cells, the method of making the said polypeptide and composition comprising said polypeptide.

Group II: Claim 10, drawn to an isolated antibody recognizing the polypeptide of group I.

Group III: Claims 11-18, drawn to a method of killing bacteria comprising administering the polypeptide of group I.

Group IV: Claims 20-22, drawn to a method reducing the immunogenicity or increasing the half-life of Chalaropsis lysozyme.

Group V: Claims 24-26, drawn to an isolated N,O-diacetylmuramidase.

Group VI: Claim 27, drawn to a Chalaropsis lysozyme having the atomic coordinates as set forth in Appendix A.

Group VII: Claim 28, drawn to a method of treating or preventing a bacterial infection comprising administering the polypeptide of group I.

Group VIII: Claim 29, drawn to a diagnostic kit for determining the presence of Ch proteins.

Group IX: Claim 30, drawn to a diagnostic kit for determining the presence of antibodies to lysozyme Ch.

The inventions listed as Groups I-IX do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons:

An international or a national stage application containing claims to different categories of invention will be considered to have unity of invention if the claims are drawn only to one of the following categories:

- 1) A product and a process specially adapted for the manufacture of said product or
- 2) A product and process of use of said product; or
- 3) A product, a process specially adapted for the manufacture of said product and a use of said product; or
- 4) A process and an apparatus or means specifically adapted for carrying out the said process; or
- 5) A product, a process specially adapted for the manufacture of said product and an apparatus or means specifically designed for carrying out the said process.

37 CFR 1.475(c) states: If an application contains more or less than one of the combination of categories of in an invention set forth in paragraph (b) of this section, unity of invention might not be present.

In addition, the PCT does not provide for multiple products or methods within single application, therefore, unity of invention is lacking with regard to Groups I-IX; see 37 CFR 1.475. 37 CFR 1.475 (d) also states: If multiple products, processes of manufacture or uses are claimed, the first invention of the category first mentioned in the claims of the application and

the first recited invention of each other categories related thereto will be considered as the main invention in the claims, see PCT Article 17(3)(a) 1.47(c).

37 CFR 1.475(e) further states; the determination whether a group of invention is so linked as to form a single inventive concept shall be without regard to whether the inventions are claimed in separate claims or as alternative within a single claim.

The inventions listed as Groups I-IX do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical feature for the following reasons: In the instant application the products of groups I, II, V, VI, VIII and IX differ substantially from one another to the extent that they have a different structure and function. For example, the polypeptides of groups I, V, VI have catalytic activities, whereas the antibody of group II are mainly used for binding to the polypeptide of group I and lack catalytic/enzymatic activity. The two products can be used exclusive of each other such that they do not share unity of invention under 37 CFR 1.475. Further, the methods of Groups III, IV and VI; the method of killing bacteria (group III), method of reducing the immunogenicity (group IV) and method of treating or preventing a bacterial infection (group VII) do not share any technical feature as they comprise unrelated steps and produce unrelated effects. The methods of groups III, IV and VI do not share any technical feature and do not have unity of invention with group I as group I already includes a method of use of the DNA which comprises unrelated steps to the methods of groups III, IV and VI, and 37 CFR 1.475 does not provide for the inclusion of multiple methods of use within the main invention.

Searching more than one of Groups I-IX would represent a burden on the Office for the following reasons. Because the products used in the method of groups III, IV and VI and the

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product of groups I, II, V, VI, VIII and IX do not share a special structural and functional feature, a search for any one said product would not encompass a search for any other said products used in the method of groups III, IV and VI. Thus, the search for more than one of Groups I-IX would be a burden on the Office. These inventions lack Unity of Invention for the reasons given above. Therefore, restriction for examination purposes, as indicated, is proper.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

#### ***Rejoinder of restricted inventions***

The examiner has required restriction between product and process claims. Where applicant elects claims directed to the product, and a product claim is subsequently found allowable, withdrawn process claims that depend from or otherwise include all the limitation of the allowable product claim will be rejoined in accordance with the provisions of M.P.E.P. 821.04. Process claims that depend from or otherwise include all the limitation of the patentable product will be entered as a matter of right if the amendment is presented prior to final rejection or allowance, whichever is earlier. Amendments submitted after allowance are governed by 37 C.F.R. 1.312.

In the event of a rejoinder, the requirement for restriction between the product claims and the rejoined process claims will be withdrawn, and the rejoined process claims will be fully examined for patentability in accordance with 37 C.F.R. 1.104. thus, to be allowable, the rejoined claims must meet the criteria for patentability including the requirements of 35 U.S.C. 101, 102, 103 and 112. Until an elected product claim is found allowable, an otherwise proper restriction requirement between product claims and process claims may be maintained. Withdrawn process claims that are not commensurate in scope with an allowed product claim will not be rejoined. See "Guidance on Treatment of Product and Process Claims in light of In re Ochiai, In re Brouwer and 35 U.S.C. 103(b), 1184 O.G. 86 (March 26, 1996). Additionally, in

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order to retain the right to rejoinder in accordance with the above policy, Applicant is advised that process claims should be amended during prosecution either to maintain dependency on the product claims or otherwise include the limitation of the product claims. **Failure to do so may result in a loss of the right to rejoinder.** Further, note that the prohibition against double patenting rejections of 35 U.S.C. 121 does not apply where the restriction requirement is withdrawn by the examiner before the patent issues. See M.P.E.P. 804.01.

***Final Comments***

To insure that each document is properly filed in the electronic file wrapper, it is requested that each of amendments to the specification, amendments to the claims, Applicants' remarks, requests for extension of time, and any other distinct papers be submitted on separate pages.

It is also requested that Applicants identify support, within the original application, for any amendments to the claims and specification.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ganapathirama Raghu whose telephone number is 571-272-4533. The examiner can normally be reached between 8 am-4: 30 pm EST. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nashaat Nashed can be reached on 571-272-0934. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300 for regular communications and for After Final communications. Any inquiry of a general nature or relating to the status of the application or proceeding should be directed to the receptionist whose telephone number is 571-272-1600.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Mar. 26, 2008.

/Tekchand Saidha/  
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